IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2016

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.37717 of 2016 & WMP.No.32335 of 2016

Bhatia Coke Energy Ltd., rep.
by its Authorized Signatory
Mr.K.Brahmananda ...Petitioner

Vs

The Assistant Commissioner (CT),
Gummidipoondi Assessment
Circle, Gummidipoondi-601201. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in CST/986512/2013-14 dated 26.8.2016 and consequential recovery notice dated 22.9.2016, quash the same and further direct the respondent to consider the documents filed on 16.12.2015 in support of their claim of exemption on high sea sales.

For Petitioner : Mr.P.V.Ravikumar

For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a limited company registered under the provisions of the Companies Act, 1956 having registered office at Indore and branch office at Gummidipoondi. The petitioner is engaged in the business of Coke and Power Generation and is an assessee on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. In this writ petition, the petitioner has challenged an assessment order under the provisions of the Central Act for the year 2013-14 and the consequential recovery notice.

3. The respondent issued a notice dated 4.8.2015 regarding sales against Form C and stated that in terms of Rule 12(7) of the Central Sales Tax Rules, the declaration forms in Form C/F/H/I or the certificate in Form E-1 or the Form E-II should be furnished to the Prescribed Authority within three months after the end of the period, to which, the declaration or the certificate related. The respondent further proposed to reject the monthly returns and also proposed to impose penalty. This was followed by another pre-assessment notice dated 5.10.2015 for the same year under the Central Act wherein there is a proposal to revise the turnover and assess the petitioner to a higher rate of tax.

4. The petitioner sent a representation dated 17.10.2015 informing the respondent that they have to receive some more C Forms from the parties for the year 2013-14 and requested time. This letter was acknowledged by the respondent on 29.10.2015, as could be seen from the signature affixed in the copy of the said letter. Thereafter, the petitioner, by reply dated 16.12.2015, enclosed the following documents :

> "1. Copy of pre-assessment notice (page 1)
> 2. Working Summery (Page 3)
> 3. High sea sale documents (pages 43)
> 4. Copy of returns related to without C-Form (Aug. & Jan. 2013)
> 5. Original C Forms with annexure (144 Nos. C Form Value Rs.2093209032
> 6. Debit notes with annexure (39 Nos. debit note value Rs.5110105
> 7. Credit notes with annexure (144 Nos. rejection value Rs.34529302."

5. The respondent, while completing the assessment and passing the impugned order, stated in the preamble to the impugned order that the petitioner produced monthly returns and C-Forms and also high sea sales documents. While giving credit to certain C-Forms with respect to inter-State sales, the respondent dealt with high sea sales and stated that the high sea sales documents filed by the petitioner were verified and found that there were no copies of bill of lading, shipping bill, high sea sales agreement, customs duty paid certificate, etc. Therefore, the respondent disallowed a major portion of the high sea sales. The respondent further stated that the petitioner availed sufficient time and that they never turned up nor appeared in person. Hence, the proposal in the notice dated 5.10.2015 was confirmed and the total and taxable turnover for the relevant year was arrived at and tax has been demanded.

6. The learned counsel for the petitioner has pointed out that 43 documents pertaining to high sea sales were produced and with regard to the transactions not covered by C-Forms, the petitioner produced debit notes (39 Nos.) and credit notes (144 Nos.). However, the respondent without verification of the documents, passed the impugned order dated 26.8.2016. It is furthermore stated that no opportunity of personal hearing was granted.

7. On a perusal of the impugned order dated 26.8.2016, it is seen that the respondent, after considering the documents produced by the petitioner, more particularly with regard to high sea sales, observed that copies of certain documents were not available. If that be the case, nothing prevented the respondent from calling upon the petitioner to produce those documents, failing which, the respondent could have drawn an adverse inference. Similarly, there is no discussion as to why the debit notes and credit notes produced by the petitioner along with their reply dated 16.12.2015, were not taken into consideration. That apart, there is nothing on record to show that notice for personal hearing was issued to the petitioner and in spite of an opportunity, the petitioner did not produce the documents. Hence, it is held that the impugned order dated 26.8.2016 is in violation of the principles of natural justice and that the respondent has not taken into consideration the material facts placed by the petitioner before the respondent. In the light of the above, the assessment has to be redone.

8. Accordingly, the writ petition is allowed, the impugned orders are set aside and the matter is remitted back to the respondent for fresh consideration. The respondent shall afford an opportunity of personal hearing to the petitioner, peruse all the documents, obtain necessary clarifications and thereafter redo the assessment in accordance with law. The above exercise shall be completed with within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Gummidipoondi Assessment Circle,
Gummidipoondi-601201.

+ 1 cc to MR.P.V. Ravikumar, Advocate Sr.61901
+ 1 cc to Special Government Pleader Sr.61937

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KSJ(CO)
Eu 03.11.16